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VIA HAND DELIVERY

June 1, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: Ex Parte Presentation in CS Docket No. 96-83, CS Docket No. 97-151, CC Docket No. 96-98, and CC Docket No. 95-185

Dear Ms. Salas:

During the course of a meeting today with Commissioner Ness and her Legal Advisor Dan Connors, and separately with Rick Chessen, Legal Advisor to Commissioner Tristani, David Turetsky and Terri Natoli of Teligent, Inc. and I discussed issues relating to telecommunications carrier access to multi-tenant environments ("MTEs"). We described the challenges facing telecommunications carriers in trying to serve consumers in multi-tenant buildings, explained the FCC's jurisdiction to resolve the problem of access to multi-tenant buildings either comprehensively or through the above-mentioned dockets, and discussed the issue of takings as it relates to telecommunications carrier access to multi-tenant buildings. I am filing this notice of ex parte presentation in those dockets that remain open through which Teligent has suggested that a resolution of this issue might be achieved.

In accordance with the Commission's rules, for each above-mentioned docketed proceeding, I hereby submit to the Secretary of the Commission two copies of this notice of Teligent's ex parte presentation as well as copies of documents that were distributed by Teligent during the course of the above-mentioned meetings.

Respectfully submitted,

Gunnar D. Halley

Counsel for
TELIGENT, INC.

No. of Copies rec'd 0+7
List A B C D E

Enclosures

cc: Commissioner Ness (without enclosures)
Dan Connors (without enclosures)
Rick Chessen (without enclosures)

Resolution Adopted at NARUC's Summer 1998 Committee Meetings

Resolution Regarding Nondiscriminatory Access to Buildings for Telecommunications Carriers

WHEREAS, Historically, local telephone service was provided by only one carrier in any given region; and

WHEREAS, In the historic one-carrier environment, owners of multi-unit buildings typically needed the local telephone company to provide telephone service throughout their buildings; and

WHEREAS, Historically, owners of multi-unit buildings granted the one local telephone company access to their buildings for the purpose of installing and maintaining facilities for the provision of local telephone service; and

WHEREAS, Competitive facilities-based providers of telecommunications services offer substantial benefits for consumers; and

WHEREAS, In order to serve tenants in multi-unit buildings, competitive facilities-based providers of telecommunications services require access to internal building facilities such as inside wiring, riser cables, telephone closets, and rooftops; and

WHEREAS, Facilities-based competitive local exchange carriers, including wireline and fixed wireless providers, have reported concerns regarding their ability to obtain access to multi-unit buildings at nondiscriminatory terms, conditions, and rates that would enable consumers within those buildings to enjoy many of the benefits of telecommunications competition that would otherwise be available; and

WHEREAS, All States and Territories, as well as the Federal Government, have embraced competition in the provision of local exchange and other telecommunications services as the preferred communications policy; and

WHEREAS, Connecticut, Ohio, and Texas already utilize statutes and rules that prohibit building owners from denying tenants in multi-unit buildings access to their telecommunications carrier of choice; and

WHEREAS, The President of NARUC testified before the Senate Judiciary Committee's Subcommittee on Antitrust, Business Rights, and Competition that "[f]or competition to develop, competitors have to have equal access. They have to be able to reach their customers and building access is one of the things that state commissions are looking at all across the country."; and

WHEREAS, The attributes of incumbent carriers such as free and easy building access should not determine the relative competitive positions of telecommunications carriers; and

WHEREAS, The property rights of building owners must be honored without fostering discrimination and unequal access; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1998 Summer Meetings in Seattle, Washington, urges State and Territory regulators to closely evaluate the building access issues in their states and territories, because successful resolution of these issues is important to the development of local telecommunications competition; and be it further

RESOLVED, That the NARUC supports legislative and regulatory policies that allow customers to have a choice of access to properly certificated telecommunications service providers in multi-tenant buildings; and be it further

RESOLVED, That the NARUC supports legislative and regulatory policies that will allow all telecommunications service providers to access, at fair, nondiscriminatory and reasonable terms and conditions, public and private property in order to serve a customer that has requested service of the provider.

Sponsored by the Committee on Communications

Adopted July 29, 1998

9TH DOCUMENT of Level 1 printed in FULL format.

THE STATE OF TEXAS
BILL TEXT
STATENET

TEXAS 75TH LEGISLATURE -- REGULAR SESSION

SENATE BILL 1751

BILL NUMBER: TX75RSB 1751 DATE: 5/21/97
ENROLLED

1997 TX S.B. 1751

VERSION: Enacted

VERSION-DATE: May 21, 1997

SYNOPSIS:

AN ACT

relating to the adoption of a nonsubstantive revision of statutes relating to utilities, including conforming amendments, repeals, and penalties.

NOTICE:
[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

TEXT: BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ADOPTION OF CODE. The Utilities Code is adopted to read as follows:

UTILITIES CODE

TITLE 1. GENERAL PROVISIONS CHAPTER 1. GENERAL PROVISIONS

(Chapters 2-10 reserved for expansion)

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE A. PROVISIONS APPLICABLE TO ALL UTILITIES CHAPTER 11. GENERAL PROVISIONS

CHAPTER 12. ORGANIZATION OF COMMISSION

CHAPTER 13. OFFICE OF PUBLIC UTILITY COUNCIL

CHAPTER 14. JURISDICTION AND POWERS OF COMMISSION AND OTHER REGULATORY AUTHORITIES

CHAPTER 15. JUDICIAL REVIEW, ENFORCEMENT, AND PENALTIES

more maps that show each utility facility and that separately illustrate each utility facility for transmission or distribution of the utility's services on a date the commission orders. (V.A.C.S. Art. 1446c-0, Sec. 3.253(b).)

Sec. 54.259. DISCRIMINATION BY PROPERTY OWNER PROHIBITED.

(a) If a telecommunications utility holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and holds a certificate if required by this title, a public or private property owner may not:

(1) prevent the utility from installing on the owner's property a telecommunications service facility a tenant requests;

(2) interfere with the utility's installation on the owner's property of a telecommunications service facility a tenant requests;

(3) discriminate against such a utility regarding installation, terms, or compensation of a telecommunications service facility to a tenant on the owner's property;

(4) demand or accept an unreasonable payment of any kind from a tenant or the utility for allowing the utility on or in the owner's property; or

(5) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, because of the utility from which the tenant receives a telecommunications service.

(b) Subsection (a) does not apply to an institution of higher education. In this subsection, "institution of higher education" means:

(1) an institution of higher education as defined by Section 61.003, Education Code; or

(2) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(c) Notwithstanding any other law, the commission has the jurisdiction to enforce this section. (V.A.C.S. Art. 1446c-0, Secs. 3.2555(c), (e), (g).)

Sec. 54.260. PROPERTY OWNER'S CONDITIONS.

(a) Notwithstanding Section 54.259, if a telecommunications utility holds a municipal consent, franchise, or permit as determined to be the appropriate grant of authority by the municipality and holds a certificate if required by this title, a public or private property owner may:

(1) impose a condition on the utility that is reasonably necessary to protect:

(A) the safety, security, appearance, and condition of the property; and

(B) the safety and convenience of other persons;

(2) impose a reasonable limitation on the time at which the utility may have access to the property to install a telecommunications service facility;

(3) impose a reasonable limitation on the number of such utilities that have access to the owner's property, if the owner can demonstrate a space constraint that requires the limitation;

(4) require the utility to agree to indemnify the owner for damage caused installing, operating, or removing a facility;

(5) require the tenant or the utility to bear the entire cost of installing, operating, or removing a facility; and

(6) require the utility to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(b) Notwithstanding any other law, the commission has the jurisdiction to enforce this section. (V.A.C.S. Art. 1446c-0, Secs. 3.2555(d), (e).)

Sec. 54.261. SHARED TENANT SERVICES CONTRACT. Sections 54.259 and 54.260 do not require a public or private property owner to enter into a contract with a telecommunications utility to provide shared tenant services on a property. (V.A.C.S. Art. 1446c-0, Sec. 3.2555(i).)

CHAPTER 55. REGULATION OF TELECOMMUNICATIONS SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.001. GENERAL STANDARD

Sec. 55.002. COMMISSION AUTHORITY CONCERNING STANDARDS

Sec. 55.003. RULE OR STANDARD

Sec. 55.004. LOCAL EXCHANGE COMPANY RULE OR PRACTICE CHANGE

Sec. 55.005. UNREASONABLE PREFERENCE OR PREJUDICE CONCERNING SERVICE PROHIBITED

Sec. 55.006. DISCRIMINATION AND RESTRICTION ON COMPETITION

Sec. 55.007. MINIMUM SERVICES

Sec. 55.008. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE

Sec. 55.009. INTRALATA CALLS

Sec. 55.010. BILLING FOR SERVICE TO THE STATE (Sections 55.011-55.020 reserved for expansion)

Public Utility Commission of Texas

Memorandum

TO: Chairman Pat Wood, III
Commissioner Judy Walsh
Commissioner Patricia Curran

FROM: Ann M. Coffin
Assistant Director
Office of Customer Protection

Bill Magness
Director
Office of Customer Protection

DATE: October 29, 1997

RE: On Agenda for November 4, 1997 Open Meeting

Project No. 18000: Informal Dispute Resolution

Office of Customer Protection Enforcement Policy regarding Rights of Telecommunications Utilities and Property Owners under PURA Building Access Provisions

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The Public Utility Commission of Texas (Commission) has recently been asked to address implementation and compliance issues concerning the "building access" provisions of the Public Utility Regulatory Act (PURA) §§54.259 and 54.260. The building access provisions of PURA were adopted during the 1995 legislative session in an effort to guarantee telecommunications utilities access to public and privately owned property for the provision of competitive telecommunications services. To date, the Commission has not addressed compliance issues associated with the building access provisions of PURA. As competition becomes a reality, telecommunications utilities have begun to raise concerns regarding their ability to access multi-tenant buildings in order to provide telecommunications services to the building's tenants. Specifically, the telecommunications utilities are concerned that property owners may be placing unreasonable terms and conditions on building access to the detriment of the developing competitive telecommunications market.

In order to quickly respond to these concerns and provide both telecommunications utilities and property owners the benefit of our interpretation of the provisions set forth in PURA §§54.259 and 54.260, the Office of Customer Protection (OCP) has developed the following enforcement policy. In no way is this policy intended to affect shared tenant

service (STS) providers' right of entry contracts with property owners. Rather, OCP seeks to facilitate negotiated building access arrangements between incumbent local exchange carriers, new entrants, and building owners by providing parties with OCP's position on these complex issues. Although the policy paper is intended to reduce the need for formal enforcement actions, in the event that parties allege violations of PURA §§54.259 and 54.260, OCP intends to use this policy to guide its determination of whether enforcement actions against parties should be initiated.

Overview of PURA, Sections 54.259 and 54.260

In 1995, the Texas Legislature passed legislation that introduced sweeping changes in the way in which telecommunications utilities may operate and the way they are regulated in Texas. Specifically, the legislation encouraged competitive entry into the Texas local exchange telecommunications market. Since that time, the Commission has actively undertaken its responsibility to introduce competition into the local telecommunications marketplace. Inevitably, the statutory mandate to "open up" the telecommunications marketplace has caused an increase in the number of telecommunications utilities seeking access to multi-tenant buildings in order to provide, install, maintain, and operate facilities necessary for the provision of service to the buildings' tenants. This demand for access has raised a fundamental question regarding a telecommunications utility's "right" to access commercial buildings in order to install facilities to serve tenants of the building. In adopting PURA §54.259, the state legislature answered this question by creating a right of access by the telecommunications utility to public and private property. In exchange for allowing the telecommunications utility access to the building, the state legislature adopted PURA §54.260, which allows the property owner to charge reasonable compensation for the access privilege.

The provisions of PURA §54.259 govern the right of a telecommunications utility to access public and private property by mandating access, on a nondiscriminatory basis, to any telecommunications utility whose services are requested by a tenant. Sections 54.259(a)(4) and (5) prohibit discrimination against a tenant or in favor of another tenant based on their selection of a telecommunications utility and prohibit a demand for payment from a tenant for allowing their chosen provider access to the building. These provisions protect tenants who exercise their "right" to choose among service providers from being subjected to actions such as increased rental charges or surcharge assessments that may occur as a result of requiring the building to give access to multiple providers. Similarly, Sections 54.259(a)(1-4) protect the telecommunications utility, whose services are requested by a tenant, against discriminatory actions by the property owner. These provisions prohibit the property owner from preventing or interfering with a telecommunications utility's installation of a service requested by a building tenant; discriminating against the telecommunications utility in regard to installation, terms, or compensation issues; and requiring "unreasonable payments" in exchange for access to the property. The principle underlying these provisions is that a

property owner may not treat similarly situated tenants or utilities on a different basis and that access and rental charges must be assessed on an equal basis among telecommunications service providers.

In recognition that property owners have the right to impose reasonable conditions and/or limitations on a telecommunications utility's ability to access the property owner's property, the state legislature enacted PURA §54.260. Specifically, PURA §54.260(a)(1)-(2) authorizes the imposition of conditions or limitations that are "reasonably necessary" to protect the security, appearance, and condition of the property and the safety of the property and persons on it, as well as the imposition of "reasonable" limitations on times available for installation. In addition, PURA §54.260(a)(3)-(5) permits the property owner to limit the number of telecommunications utilities that may access the owner's property if space constraints dictate such a limitation; require indemnification for certain costs, and; require the tenant or utility to bear the entire cost of installing, operating, or removing any facilities. Most significant, however, is PURA §54.260(a)(6), which allows the property owner to require the utility to pay compensation that is "reasonable and nondiscriminatory" among telecommunications companies.

PUC Jurisdiction

A number of parties that filed comments in this project raised the issue of whether the Commission has jurisdiction over matters involving building access. Specifically, parties challenge the constitutionality of the provisions, as well as the Commission's authority to enforce PURA §§54.259 and 54.260 against property owners.

Pursuant to PURA §§15.021, 15.023, and 54.260, the Commission is clearly vested with jurisdiction to enforce the building access provisions of PURA. Specifically, PURA §54.260(b) states that "notwithstanding any other law, the commission has jurisdiction to enforce this section." (emphasis added). Without question, the Commission has jurisdiction over the operations and services of telecommunications utilities operating in Texas. In light of the statutory language in PURA §54.260(b) and the telecommunications expertise that the Commission brings to resolving building access issues, the Commission can reasonably conclude that it has primary jurisdiction over building access issues involving disputes between telecommunications utilities and property owners. Thus, any remedial relief or administrative penalty action ordered by the Commission would extend to property owners on issues which involve the rights of telecommunications utilities in building access situations.

Enforcement Policy

In enacting PURA §54.259, the Legislature sought to encourage competition in the local telecommunications market by facilitating competitive provider access to customers in

privately owned multi-tenant buildings. It is with this in mind that OCP has crafted an enforcement policy on the building access issue that attempts to balance the rights of both service providers and property owners. OCP emphasizes that this enforcement policy does not constitute a rule or order of the Commission. Rather, the policy seeks to establish the parameters for interpreting PURA §§54.259 and 54.260 and guide compliance efforts in this area.

The positions of the parties affected by this issue are diverse. The primary areas of conflict center around the parties' positions regarding the limits of the "discrimination" and "unreasonable payment" terms in PURA §§54.259 and 54.260, respectively. Specifically, the telecommunications utilities argue that absent some regulatory limits on the compensation issue, property owners have an incentive to extract monopoly rents for access. The utilities argue that competitive telecommunications options enhance the market value of the building and that any compensation to property owners must be minimal and take into consideration the building enhancement that results from the provision of competitive telecommunications services. Representatives of property owners, on the other hand, argue that the free market must be allowed to dictate terms, conditions, and compensation for access to a building's risers and conduits. These parties also argue that simply looking at the quantity of space to be used by the telecommunications utility does not take into account the value of the property, the nature of the improvements, its location, or the quality or size of the "market" created by the property owner for the telecommunications utility.

I. Basis for determining reasonable compensation.

Given the complexity of the issue, it is unlikely that a single compensation method can be found for each type of space requirement. The basic underlying principle, however, for any cost methodology related to building compensation issues is that property owners must impose the same costs, methodology, and rates on any telecommunications utility which gains access to the building. This approach ensures that competitive telecommunications services are available to tenants without the imposition of unreasonable building restrictions by property owners. Granting building tenants access to competitive carriers is central to achieving PURA's goal of making competitive telecommunications service alternatives available for all Texans and their businesses, regardless of whether they live and work in a single family home or a multi-tenant building. Although the real estate industry, in general, is controlled by the free market, building access is a market segment that is not subject to free market forces. Rather, the property owner, by virtue of his ability to control access to the tenant, acts as a gatekeeper through whom telecommunications utilities must gain passage. The exercise of this control enables the property owner to dictate terms and conditions of the building access arrangement that may grant access to one telecommunications utility, but deny access to another. In addition, the telecommunications utility cannot freely "walk away" from the terms and conditions placed by the building owner on the access arrangement, because the utility must have access to that particular building in

order to provide service to its customer who is a tenant in that building. In order to address the absence of free market control over building access issues, the Legislature established compensation requirements for property owners. Specifically, the Legislature required that compensation for access be reasonable and nondiscriminatory.

The ability of the property owner to charge compensation which is reasonable and nondiscriminatory does not, however, imply that every telecommunications utility must be treated identically. Rather, it requires that a telecommunications utility be offered the same terms, conditions, and compensation arrangement as its similarly situated counterpart. This interpretation preserves not only the right of the parties to freely engage in commercial transactions wherein a service provider seeks access to private property, but also ensures that the property owner does not exert control over the building access arrangement in a manner that is unreasonable or discriminatory to the telecommunications utility.

In establishing the parameters applicable to the term "reasonable" compensation, it is important to distinguish between buildings in which the property owner has moved to a single minimum point of entry (MPOE), and thus owns all wiring inside the point of demarcation where the main line enters the building. In such instances, the telecommunications utilities must compensate the property owner for the use of cable distribution facilities. In multi-tenant buildings where telecommunications utilities maintain ownership of their wiring and other facilities to the point of contact with the individual tenants (multiple demarcation points), telecommunications utilities must compensate the property owner for use of building space.

A. Basis for determining reasonable compensation in a single demarcation point system.

In instances in which the property owner has assumed responsibility and ownership of wiring beyond the MPOE, the telecommunications utility may decide to utilize the building's existing cable distribution facilities. A property owner may charge for use of distribution facilities on the owner's side of the demarcation point in a number of different ways. For instance, the property owner may base compensation on a per pair, per circuit, or per conduit or sheath basis. Without question, the charge for use of distribution facilities on the owner's side of the demarcation point may take into consideration the type of facilities used by the property owner in providing telecommunication services. In negotiating compensation terms for the use of the property owner's distribution facilities, parties may consider factors such as the amount of facilities investment, the useful life of the facilities, tax and a reasonable rate of return.

A property owner may also seek compensation for the physical space used by the utility in the building's equipment room and any actual costs associated with the utility's use of the building. The property owner, by controlling building access, manages an essential

element in the delivery of telecommunications to the tenants in that building. As such, the price of equipment room space leased to utilities to provide service to tenants in that building should be based on the actual economic cost of the space and not on the number of tenants served or the revenues generated by the carrier for the provision of telecommunications services to the building's tenants. Compensation in this manner is reasonable because it ensures similar terms and conditions for all providers.

B. Basis for determining reasonable compensation in a multiple demarcation point system.

In multi-tenant buildings, where the telecommunications utility maintains ownership of the wiring and other facilities to the point of contact with the individual tenants (multiple demarcation points), the property owner may receive compensation for the telecommunications utility's use of the rental space in the equipment room, use of the building's conduit facilities, and any actual costs associated with the utility's use of the building. Compensation for rental floor space, as well as the use of the building conduit facilities should be based on the rental value in the marketplace of the property used by the provider, not on the type of facilities used, the revenues generated, or the number of customers served.

Compensation mechanisms that are based on the number of tenants or revenues are not reasonable because these arrangements have the potential to hamper market entry and discriminate against more efficient telecommunications utilities. By equating the cost of access to the number of tenants served or the revenues generated by the utility in serving the building's tenants, the property owner effectively discriminates against the telecommunications utility with more customers or greater revenue by causing the utility to pay more than a less efficient provider for the same amount of space.

The basis of any compensation mechanism should be to compensate the property owner for the space used, regardless of the number of and use customers served or the revenues generated by the telecommunications carrier. For this reason, use of the square foot rental rate for use of the basement and riser space is a reasonable basis of compensation in buildings with multiple demarcation systems. Lease rates for commercial property are an appropriate guide for determining compensation for access to the building because commercial leases not only reflect the variation in rental rates depending on the location and desirability of a particular building, but indicate what tenants are willing to pay for the amount of square footage being used by the tenant in the same marketplace and for the same type of space. This method of compensation ensures that the property owner is paid the fair market value for the use of the space and also recognizes that space in the basement of an office is not as valuable as retail space in a section of the building open to the public, or a corner office on the top floor of an office building.

II. Applicability of the discrimination provision in PURA §54.259 to existing service arrangements with incumbent local exchange carriers.

PURA §54.259 specifically prohibits a property owner from discriminating in favor of or against a tenant or telecommunications utility in any manner. This prohibition against discriminatory treatment is consistent with the overall terms of PURA which sought to advance the public welfare by promoting competition in the provision of telecommunications services in Texas. *See* PURA §51.001(a)-(e). While recognizing that many existing access arrangements were made prior to competitive entry, it is OCP's position that prior contractual agreements which provide for exclusivity or preferential terms for the incumbent telecommunications utility disserve the goals of PURA specifically and telecommunications competition generally. Accordingly, OCP interprets the PURA §54.259 nondiscrimination provision to be applicable to pre-September 1, 1995 business arrangements between incumbent local exchange carriers and property owners.

Although the nondiscrimination provisions of PURA §54.259 are applicable to pre-September 1, 1995 service arrangements, the non-discrimination provisions are triggered only at the time a competitive carrier seeks access to the building served by the incumbent telecommunications carrier. Therefore, service arrangements made prior to September 1, 1995, should be allowed to stay in place until a second carrier invokes the nondiscrimination requirement. Once a competitive carrier seeks access to the building, the nondiscrimination provisions are triggered, and the property owner must either treat all carriers the same as the incumbent "in relation to the installation, terms, conditions, and compensation of telecommunications services facilities to a tenant on the owner's property"[1], or re-negotiate with the incumbent to treat it the same as all other carriers seeking access.

Because the legislative intent behind PURA §§54.259 and 54.260 is to foster competition, not provide protected status to the incumbent, compensation arrangements for building access that apply only to new entrant telecommunications utilities or new customers of an incumbent telecommunications utility are not reasonable. Every provider of telecommunications service must charge rates that recover its costs. At the same time, every provider's prices are constrained by the prices of its competitors. If the incumbent is paying no fee for building access, it certainly will have a cost advantage over its new entrant competitors that are paying such a fee. Exempting incumbents from paying for building access inevitably impacts competition adversely because of the comparative cost advantage the incumbent gains as a result. Accordingly, when a new provider enters a commercial property, the treatment of the incumbent must be revised to match that accorded to the new provider. Thus, if private property owners require new providers to pay a fee, the incumbent should begin to pay a fee calculated in the same manner and on the same basis.

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[1] *See* PURA §54.259(a)(3).

III. Prospective Customers as a Condition of Access

As more and more telecommunications utilities seek access to a building to provide service to the building's tenants, space limitations associated with access will inevitably arise. PURA §54.260 authorizes a property owner to reasonably limit the number of utilities that have access to the property if the owner can demonstrate that space constraints justify such a limitation. OCP is concerned, however, that some carriers may attempt to preemptively "reserve" space in the building to the exclusion of subsequent carriers who may have the intention of serving the building on a more immediate basis. OCP will interpret such behavior on the part of the telecommunications utility to be anticompetitive. In addition, any restrictions on building access that impose unreasonable delays on a competitive carrier's provision of telecommunications service to a customer will be considered discriminatory actions on the part of the property owner. OCP believes that the appropriate remedial course for either activity is enforcement action by the Commission.

IV. Carrier of Last Resort Obligation and Building Access

Several parties commented regarding a telecommunications utility's carrier of last resort (COLR) obligation in the context of the building access issue. Specifically, parties sought clarification on whether a telecommunications utility with COLR obligations may refuse to serve a building if a property owner seeks compensation for access. Because the policy implications associated with the COLR obligations extend beyond the building access issue, OCP declines to address the issue in this enforcement policy.

V. Conclusion

In enacting PURA §§54.259 and 54.260, the legislature sought to facilitate the development of local competition by ensuring that new entrants receive access to tenants on private property based on reasonable compensation and equal, non-discriminatory terms. Only under these conditions, will residential and business customers in multi-tenant buildings experience the benefits of competition in the form of lower rates and expanded choices for products and services. OCP encourages telecommunications utilities and property owners to negotiate building access arrangements that will enable utilities to compete for business on the basis of price and the provision of expeditious service. These types of access arrangements will benefit not only telecommunications utilities and property owners, but their customers as well.

Although OCP's enforcement policy regarding building access issues is intended to facilitate building access arrangements between parties and reduce the necessity for formal enforcement actions, parties should be aware that the policy statements and proposals for resolving disputes developed in Project No. 18000 do not constitute commission rules and

resolving disputes developed in Project No. 18000 do not constitute commission rules and orders, and do not deprive parties of rights under PURA or the Administrative Procedure Act. Project No. 18000 represents the Commission's effort to expedite settlement of business disputes in the increasingly competitive markets for telecommunications and electric services.

Please contact Ann Coffin (6-7144) or Bill Magness (6-7145) if you would like additional information on this matter.

Attachment

cc: Adib, Parviz
Ballou, Paul
Bertin, Suzanne
Davis, Stephen
Dempsey, Rod
Featherston, David
Hamilton, Kathy
Jenkins, Brenda
Kjellstrand, Leslie
Kyle, Sandra
Lemme, John
Mueller, Paula
Prior, Dianne
Sappenfield, Scott
Silverstein, Alison
Slocum, Brent
Srinivasa, Nara
Whittington, Pam
Wilson, Martin
Vogel, Carole

CONNECTICUT GENERAL STATUTES ANNOTATED
TITLE 16. PUBLIC SERVICE COMPANIES
CHAPTER 283. DEPARTMENT OF PUBLIC UTILITY CONTROL: TELEGRAPH, TELEPHONE, ILLUMINATING, POWER AND WATER COMPANIES

Current through Gen. St., Rev. to 1-1-97

§ 16-247l. Occupied buildings and access to telecommunications providers: Service, wiring, compensation, regulations, civil penalty

(a) As used in this section:

(1) "Occupied building" means a building or a part of a building which is rented, leased, hired out, arranged or designed to be occupied, or is occupied (A) as the home or residence of three or more families living independently of each other, (B) as the place of business of three or more persons, firms or corporations conducting business independently of each other, or (C) by any combination of such families and such persons, firms or corporations totaling three or more, and includes trailer parks, mobile manufactured home parks, nursing homes, hospitals and condominium associations.

(2) "Telecommunications provider" means a person, firm or corporation certified to provide intrastate telecommunications services pursuant to sections 16-247f to 16-247h, inclusive.

(b) No owner of an occupied building shall demand or accept payment, in any form, except as provided in subsection (f) of this section, in exchange for permitting a telecommunications provider on or within his property or premises, or discriminate in rental charges or the provision of service between tenants who receive such service and those who do not, or those who receive such service from different providers, provided such owner shall not be required to bear any cost for the installation or provision of such service.

(c) An owner of an occupied building shall permit wiring to provide telecommunications service by a telecommunications provider in such building provided: (1) A tenant of such building requests services from that telecommunications provider; (2) the entire cost of such wiring is assumed by that telecommunications provider; (3) the telecommunications provider indemnifies and holds harmless the owner for any damages caused by such wiring; and (4) the telecommunications provider complies with all rules and regulations of the Department of Public Utility Control pertaining to such wiring. The department shall adopt regulations, in accordance with the provisions of chapter 54, [FN1] which shall set forth terms which may be included, and terms which shall not be included, in any contract to be entered into by an owner of an occupied building and a telecommunications provider concerning such wiring. No telecommunications provider shall present to an owner of an occupied building for review or for signature such a contract which contains a term prohibited from inclusion in such a contract by regulations adopted hereunder. The owner of an occupied building may require such wiring to be installed when the owner is present and may approve or deny the location at which such wiring enters such building.

(d) Prior to completion of construction of an occupied building, an owner of such a building in the process of construction shall permit prewiring to provide telecommunications services in such building provided that: (1) The telecommunications provider complies with all the provisions of subdivisions (2), (3) and (4) of subsection (c) of this section and subsection (f) of this section; and (2) all wiring other than that to be directly connected to the equipment of a telecommunications service

customer shall be concealed within the walls of such building.

(e) No telecommunications provider may enter into any agreement with the owner or lessee of, or person controlling or managing, an occupied building serviced by such provider, or commit or permit any act, that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of the services of other telecommunications providers.

(f) The department shall adopt regulations in accordance with the provisions of chapter 54 authorizing telecommunications providers, upon application by the owner of an occupied building and approval by the department, to reasonably compensate the owner for any taking of property associated with the installation of wiring and ancillary facilities for the provision of telecommunications service. The regulations may include, without limitation:

(1) Establishment of a procedure under which owners may petition the department for additional compensation;

(2) Authorization for owners and telecommunications providers to negotiate settlement agreements regarding the amount of such compensation, which agreements shall be subject to the department's approval;

(3) Establishment of criteria for determining any additional compensation that may be due;

(4) Establishment of a schedule or schedules of such compensation under specified circumstances; and

(5) Establishment of application fees, or a schedule of fees, for applications under this subsection.

(g) Nothing in subsection (f) of this section shall preclude a telecommunications provider from installing telecommunications equipment or facilities in an occupied building prior to the department's determination of reasonable compensation.

(h) Any determination by the department under subsection (f) regarding the amount of compensation to which an owner is entitled or approval of a settlement agreement may be appealed by an aggrieved party in accordance with the provisions of section 4-183.

(i) Any person, firm or corporation which the Department of Public Utility Control determines, after notice and opportunity for a hearing as provided in section 16-41, has failed to comply with any provision of subsections (b) to (e), inclusive, of this section shall pay to the state a civil penalty of not more than one thousand dollars for each day following the issuance of a final order by the department pursuant to section 16-41 that the person, firm or corporation fails to comply with said subsections.

CREDIT(S)

1997 Electronic Pocket Part Update

(1994, P.A. 94-106, § 1.)

[FN1] C.G.S.A. § 4-166 et seq.

C. G. S. A. § 16-247l

12TH OPINION of Focus printed in FULL format.

In the Matter of the Commission's Investigation into the Detariffing of the Installation and Maintenance of Simple and Complex Inside Wire

Case No. 86-927-TP-COI

PUBLIC UTILITIES COMMISSION OF OHIO

1994 Ohio PUC LEXIS 778

September 29, 1994

PANEL:
[*1]

Craig A. Glazer, Chairman; J. Michael Biddison; Jolynn Barry Butler; Richard M. Fanelly; David W. Johnson

OPINION:
SUPPLEMENTAL FINDING AND ORDER

The Commission finds:

I. Background

To better understand the subject of this Entry some definitions are in order. Inside wire refers to the customer premise portion of telephone plant which connects station components to each other and to the telephone network. Inside wire in conjunction with customer premise equipment (CPE) constitutes all telephone plant located on the customer's side of the demarcation point marking the end of the telephone network. Generally, any inside wire which connects station components to each other or to common equipment of a private branch exchange (PBX) or key system is classified as complex. Simple inside wire is any inside wire other than complex wire. Embedded inside wire is defined as inside wire installed prior to January 1, 1987.

Also to better understand this order, it is necessary to first understand the history of inside wire at the federal level. Changes in the way that inside wire has historically been handled began in 1979. In a Notice of Proposed Rulemaking released on August 14, [*2] 1979, in CC Docket No. 79-105 (79-105), the Federal Communications Commission (FCC) proposed, among other things, the expensing, as opposed to capitalization, of the Station Connections Account 232. The 79-105 proceeding was initiated by a petition filed by American Telephone and Telegraph Company (AT&T) in response to an FCC decision in Docket No. 19129, in which the FCC held that its current accounting system should be modified to place the burden of all costs associated with station connections on the causative ratepayer, as opposed to the then-current system which placed the burden on present and future ratepayers. The FCC, responding to AT&T's petition in 79-105, bifurcated the Station Connections Account 232, creating two separate accounts. The Station Connections-Other Account 242 includes costs associated with the wire after the telephone pole or pedestal, which includes the telephone drop and underground cable, up to and including the

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[*18] United asserts that it seldom knows who owns the property. Any requirement to bill an entity other than the subscriber would allegedly increase LECs' administrative costs and would probably be resisted by property owners. United and GTE also state that the responsibility for ongoing maintenance is a contractual matter between the landlord and the tenant.

Ohio Bell maintains that the Commission does not have any statutory authority over landlords or tenants so as to vest responsibility or ownership in the property owner.

OBOMA indicates that its members do not want to become involuntary owners of abandoned LEC inside wire. They neither desire the responsibility for the requisite maintenance nor do they have the proper training to do so. OBOMA does not want the property owner to become involved in arranging for the tenant's telecommunications service. OBOMA does not believe that the ownership and maintenance issues can presently be addressed by lease terms since it will be awhile before all existing leases are recycled and amended.

OCC opposes OTA's belief that the LECs have no choice but to hold subscribers financially responsible for inside wire maintenance. OCC contends that [*19] a choice does exist, but that the LECs desire to maintain a captive market for a detariffed service. Since the Commission converted these services from utility services to non-utility services, OCC believes that property owners should be responsible for the maintenance of inside wire, especially since tenants do not have equal bargaining power to negotiate inside wire maintenance terms. OCC also requests that the Commission require all LECs to inform subscribers, by an actual notice, that landlords, and not tenant/subscribers, are responsible for maintaining inside wire and that the landlord's permission should always be sought by the LEC before repairs are made. OCC further contends that, in an attempt to enhance their own inside wire business, the LECs have been unfairly usurping their monopoly monthly billing powers for local service in order to obtain the inside wire business of the perceived captive customer.

Commission Guidelines on Ownership and Maintenance of Inside Wire

The Commission stated in its December 16, 1986, Finding and Order, Case No. 86-927-TP-COI, that it believed that LECs intend to abandon inside wire facilities upon full amortization; it did not [*20] require such, nor did it determine to whom legal title would actually pass upon relinquishment. Due to the fact that most of the commenting LECs have now made known their opposition to relinquishment, it is clear that the LECs will not, on their own, formally relinquish ownership of inside wire despite the full amortization of Account 232. Upon reviewing the comments filed pertaining to ownership, the Commission finds that despite the fact that most, if not all, LECs have already reached a zero net investment in Account 232 relating to inside wire, the companies may still possess some property rights in the inside wire itself. Therefore, the Commission does not believe that total relinquishment of inside wire ownership by the LECs is appropriate at this time. In accordance with the FCC's Memorandum Opinion and Order of November 13, 1986, in CC Docket No. 79-105, although LECs shall be permitted to maintain inside wire ownership, subscribers/property owners shall be permitted to remove, replace or rearrange inside wire at their own expense without prior consent of the LECs. In addition, no person owning, leasing, controlling, or managing a multi-tenant building shall forbid [*21] or unreasonably restrict any occupant, tenant,

lessee, or such building from receiving telecommunications services from any provider of its choice, which is duly certified by this Commission.

The Commission agrees with the commenting LECs, OTA, and OBOMA that ownership and the responsibility for the maintenance of inside wire should be left to individual agreements or contracts between landlords and their tenants, in addition to the application of local property law. However, the Commission is extremely concerned about customer education pertaining to the issue of inside wire maintenance and, therefore, notes that this issue is specifically addressed by the required customer notice provided for in Appendix A of this Order.

B. Protector Access

The Commission, in its Entries of July 16, 1987, March 27, 1990, and July 8, 1993, requested comments regarding the issue of whether protector access should be restricted to particular entities. The FCC, in its Report and Order in CC Docket No. 88-57, reaffirmed its previous conclusion that protector access be limited to LEC personnel only; however, it did not prevent the states from allowing access to the protector.

All commenting [*22] LECs and the OTA oppose allowing non-LEC personnel access to the protector. The protector is a small device attached to the outer wall of a dwelling which provides grounding of a phone line in an attempt to prevent subscribers from being injured as a result of electrical shock. The LEC and OTA maintain that allowing non-LEC personnel access could compromise the integrity of the LEC portion of the phone network or could possibly, due to faulty grounding, result in human injury from electrical shock. In addition, the commenting LECs and the OTA all express concern that, if non-LEC protector access is permitted, it would confuse the responsibility and legal liability for damage claims, thereby increasing the exposure of LECs to damage claims and litigation. If non-LEC protector access is allowed, individuals without proper training or knowledge will presumably be working on the protector. United avers that only employees of utilities should be permitted access to utility-owned facilities. DOD opposes non-LEC protector access, except where it is necessary for preserving communications in the interest of national security.

OTA asserts that Ohio's LECs are prepared to respond timely, [*23] at tariffed rates, to all tariff requests necessitating access to the protector. It is OTA's belief that it is a common practice of Ohio's telephone companies not to charge for diagnostic services when no NID is present and when a LEC determines trouble to be situated on the customer side of the demarcation point. ALLTEL indicated that, provided a NID is present, a competitive provider of inside wire services will not require protector access. Ohio Bell also believes that prohibiting protector access will not result in increased costs to subscribers since the diagnosing of all inside wire problems without NIDs and the repair of all protector problems will occur free of charge.

OCC questions OTA's motives for rejecting non-LEC access to the protector. OCC contends that OTA's arguments, concerning network injury for disallowing non-LEC access to the protector, are suspect since the LECs could have anti-competitive motivations. OCC further argues that the cost to the residential consumers in terms of time and money outweighs the remote potential harm to the network. These costs include the charges incurred by the customer for having the LEC work on the protector and the time involved [*24] waiting

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, to determine appropriate policy regarding access to residents of multiple dwelling units (MDUs) in Nebraska by competitive local exchange telecommunications providers.	) Application No. C-1878/PI-23))) ORDER ESTABLISHING STATEWIDE POLICY FOR MDU ACCESS)) Entered: March 2, 1999

APPEARANCES:

For the Commission:
John Doyle
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1200 "N" Street
Lincoln, NE 68508

For US West Communications:
Charles Steese
1801 California, Suite 1500
Denver, Co 80202

For Cox:
Jon Bruning
8035 S. 83rd Avenue
LaVista, Nebraska
and
Carrington Phillip
1400 Lakehearn Drive
Atlanta, Georgia

For the Community Associations Institute:
David Tews
1630 Duke Street
Alexandria, VA 22314

BY THE COMMISSION

On August 5, 1998, the Commission, on its own motion, opened this docket to determine appropriate policy regarding access to residents of multiple dwelling units (MDUs) in Nebraska by competitive local exchange telecommunications providers (CLECs). Notice of this docket was published in The Daily Record, Omaha, Nebraska, on August 10, 1998, pursuant to the rules of the Commission.

Cox Nebraska Telcom II, L.L.C. (Cox) previously filed a formal complaint (FC-1262) against US West Communications, Inc. (US West) with this Commission concerning access to residents of MDUs. Upon review of the complaint, the Commission was of the opinion that as competition developed further in Nebraska markets, it would be in the best interest of the public that the Commission develop a gene-

ral overall policy regarding access to MDUs. Therefore, the Commission opened this docket and Cox withdrew its complaint against US West.

The Commission began its investigation by requesting that all interested persons submit comments on this issue by September 8, 1998. On September 14, 1998, the Commission held a hearing on these issues in the Commission Hearing Room in Lincoln, Nebraska, with the appearances as shown above.

E V I D E N C E

Carrington Phillip, vice president of Cox, testified as follows: Local exchange competition should not be something that is limited only to those who are fortunate enough to own their own homes. To resolve this issue, Cox believes that it is necessary to permit all certificated carriers who want to invest in serving tenants in MDUs the opportunity to efficiently do so. Cox suggested that the Commission develop a solution that removes artificial barriers related to historical network design and the incumbent's inherent monopoly power so that competition can flourish.

In facilitating implementation of competition in the provisioning of local exchange service, Cox suggested that its proposal would strike a regulatory balance between property rights of the incumbent local exchange carrier (ILEC) and the requirements established for state regulators in the Telecommunications Act of 1996 (Act).

Cox suggested that the ILEC should be ordered to establish a minimum point of entry (MPOE) as close to the edge of the MDU property line as possible. The ILEC could retain ownership of the cable, conduit, etc. between the demarcation point and the newly located MPOE, but should receive a reasonable one-time cost-based amount to move the MPOE to the property line. Furthermore, a CLEC should pay the ILEC a one-time fee equal to 25 percent of the replacement value of this cable, conduit, etc. for access. Replacement value should be defined as the new cost of the copper wire. Replacement cost should be estimated to be $4.20 per cable foot, based on the cost of 600 pair cable.

Maintenance and repair of the facility should be accomplished by a third-party contractor approved by the ILEC and the current service provider. The maintenance and repair would be performed in accordance with mutually agreed upon national standards with the cost borne by the ILEC and CLEC on a percentage basis.

Mr. Alan Bergman, Director of State Market Strategies for US West in Nebraska, testified as follows: US West agrees strongly that the tenants in MDUs should have choice. However, Mr. Bergman emphasized that other carriers currently have an opportunity to provide MDU customers with a choice. All local exchange carriers, including US West, are required under the Act to make available for resale at wholesale rates their retail services. Furthermore, nothing is preventing CLECs such as Cox from constructing their own facilities up to the demarcation point as US West has done. Either of these methods would provide choice for MDU residents.

US West proposes that competitors should be able to use a portion of the unbundled loop and the so-called sub-loop unbundling in order to provide local service to an MDU resident. This would require that a competitor pay the cost, a one-time non-recurring charge, for the installation of a new cross-connect box at a point agreed to by the owner near the property line where the facility comes into the MDU property. Then, beyond that, the competitor would pay an average cost-based rate determined through the cost docket for the portion of the unbundled loop that it uses.

Mr. David Tews, representing the Community Associations Institute, testified as follows: The Commission should recognize the self-determinate process and the role the community associations play in maintaining, protecting and preserving the common areas, the values of the community or the value in an individually owned property within the development. To fulfill these duties, community associations must be able to control, manage, and otherwise protect their common property.

O P I N I O N A N D F I N D I N G S

After hearing testimony, reviewing briefs and other comments filed in this docket, the Commission believes that a statewide policy regarding CLEC access to residential MDUs is necessary to

protect the rights of MDU residents. The primary purpose of this order is to create a uniform framework that parties throughout the state, incumbents and competitors alike, can utilize to serve residents of MDUs. Such a statewide policy should foster competition while simultaneously providing the residents of MDUs a realistic opportunity to select their preferred telecommunications provider.

The National Association of Regulatory Utility Commissioners (NARUC) explicitly recognized the problem in its "Resolution Regarding Nondiscriminatory Access to Buildings for Telecommunications", adopted July 29, 1998. In that resolution, the NARUC Committee noted that some states, including Connecticut, Ohio and Texas, already require building owners and incumbent telephone companies to give tenants access to the telecommunications carrier of their choice. Nebraska is no different, and this Commission believes residents of Nebraska MDUs should have the same choice.

The intent behind the Telecommunications Act of 1996 was to open up the telecommunications market for competition. However, residents of MDUs have generally been unable to reap the benefits of this industry transformation.

It is true that competition has brought many desirable changes to the telecommunications industry. However, the benefits of competition have not come without a certain amount of additional costs. MDU residents must be given the opportunity to take advantage of competition if they are to be expected to bear any increased costs associated therewith. As such, the Commission believes that residential MDU properties must be opened up to competition.

In order to develop a statewide framework for access to residential MDUs, the Commission finds the following:

Upon the request of a CLEC or any multi-tenant residential property owner (Owner), an ILEC shall provide a MPOE at the MDU property line or at a location mutually agreeable to all parties. The ILEC, or a mutually agreeable third party or CLEC, as identified in a pre-approved list of third-party contractors and CLECs, must complete the move of the MPOE in the most expeditious and cost effective manner possible. Nothing contained herein shall

limit or prohibit access to MDU properties by any competitive carrier through any other technically feasible point of entry.

The CLEC or requesting Owner shall pay the full cost associated with said move. CLECs who connect to the MPOE within three years of the move's completion shall contribute on an equitable and nondiscriminatory pro-rata basis to the initial cost of said move based upon the number of CLECs desiring access to the MDU through such MPOE.

The demarcation point[1] shall remain in its current position unless otherwise agreed to by the parties. If the demarcation point remains unmoved, then the ILEC shall retain ownership of any portion of the loop between the demarcation point and the newly moved MPOE as well as any existing campus wire (jointly referred to hereafter as "campus wire"). Said CLECs shall be authorized to use the ILEC's campus wire for a one-time fee of 25 percent of "current" construction charges of the portion of the loop between the demarcation point and the newly moved MPOE based upon an average cost per foot calculation. The average cost per foot shall be derived from a sample of recently completed ILEC construction work orders for MDUs, with the resulting calculation subject to periodic Commission review. CLECs which connect to the MPOE within three years of the move's completion shall contribute on an equitable and nondiscriminatory pro-rata basis to the one-time aggregate 25 percent charge for use of the ILEC's campus wire. The portion due from each carrier shall be based upon the number of CLECs desiring access to the MDU through such MPOE.

Maintenance of the campus wire and the MPOE itself shall be performed by the ILEC, or a mutually agreeable third party or CLEC, as identified in the pre-approved list of third-party contractors and CLECs. Such maintenance shall be completed in accordance with national standards and in the most expeditious and cost effective manner possible. Maintenance expenses shall be paid by all current users of such MPOE on a pro-rata basis based upon the percentage of current customers within the affected MDU building or property on the start date of maintenance.

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[1] The demarcation point is the point at which the telephone company's facilities and responsibilities end and customer-controlled wiring begins.

Exclusionary contracts and marketing agreements between telecommunications companies and landlords are anti-competitive and are against public policy. Exclusionary contracts are barriers to entry and marketing agreements can have a discriminatory effect. Therefore, the Commission believes, with the following exception, that all such contracts and agreements should be prohibited.

The Commission is of the opinion that since condominiums, cooperatives and homeowners' associations are operated through a process where each owner has a vote in the entity's business dealings, the prohibitions against exclusionary contracts and marketing agreements should not apply to this type of entity.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this order hereby establishes a statewide policy for residential multiple dwelling unit access in the state of Nebraska.

IT IS FURTHER ORDERED that all telecommunications providers shall comply with all applicable foregoing Findings and Conclusions as set forth above.

IT IS FURTHER ORDERED that since condominiums, cooperatives and homeowners' associations are operated through a process where each owner has a vote in the entity's business dealings, the prohibitions against exclusionary contracts and marketing agreements shall not apply to this type of entity.

IT IS FINALLY ORDERED that should any court of competent jurisdiction determine any part of this order to be legally invalid, the remaining portions of this order shall remain in effect to the full extent possible.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of March, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson
//s//Frank E. Landis

COMMISSIONERS DISSENTING:
//s//Daniel G. Urwiller

Chairman

ATTEST:

Executive Director

SUBMISSION BY THE GOVERNMENT OF THE UNITED STATES TO THE GOVERNMENT OF JAPAN REGARDING DEREGULATION, COMPETITION POLICY, AND TRANSPARENCY AND OTHER GOVERNMENT PRACTICES IN JAPAN

October 7, 1998

* * *

The Government of the United States of America (USG) is pleased to present to the Government of Japan (GOJ) this submission on deregulation, competition policy, and transparency and other government practices in Japan. The proposals it contains are presented in the context of the Enhanced Initiative on Deregulation and Competition Policy ("Enhanced Initiative") agreed to in June 1997 between President Clinton and then Prime Minister Hashimoto, and in light of the progress achieved by the two Governments as detailed in the "First Joint Status Report on the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy" ("Joint Status Report"), announced in Birmingham in May 1998. This submission addresses the need for full and timely implementation of the measures set out in the Joint Status Report, and reflects the determination of our two Governments to build on those achievements during the second year under the Enhanced Initiative. The United States believes that this submission should form the basis for a Second Joint Status Report to be issued jointly by the two Governments by the next G-8 summit in June 1999 in Cologne, Germany.

The United States has long promoted deregulation in Japan based upon the belief that deregulation will strengthen the foundations of the Japanese economy, increase business and employment opportunities throughout Japan, open Japan's markets to its trading partners, and improve the standard of living and long-term economic and financial security of the Japanese people. Meaningful and timely deregulation is a critical complement to effective macroeconomic policies to restore domestic demand-led growth to the Japanese economy. Moreover, the current global economic crisis, and particularly the serious economic downturns experienced by many of Japan's Asian neighbors, makes all the more pressing the need for Japan to take forceful action to deregulate and open its markets.

With the Enhanced Initiative as the centerpiece of bilateral deregulation efforts, the United States and Japan continue to address deregulation issues in several bilateral agreements and fora. As such, the proposals contained in this submission are not intended to be an exhaustive list of issues in Japan of interest and concern to the USG.

The United States welcomes the strong statement by Prime Minister Obuchi to "pour every effort toward carrying out deregulation and market liberalization" in Japan. The United States also appreciates Japan's recognition of the pressing need for further deregulation in Japan as symbolized by its announcement in March 1998 of the Three-year Program for the Promotion of Deregulation. The United States strongly urges Japan to move quickly to implement the measures contained in that program, and to dramatically expand its scope and depth.

The United States also welcomes the creation last spring of a new Deregulation Committee under the Administrative Reform Promotion Headquarters. The United States appreciates the mandate given the Deregulation Committee both to monitor the implementation of the measures identified in the Plan and to recommend further deregulatory measures for implementation by the Japanese Government.

The United States looks forward to continuing to work closely and cooperatively with Japan on deregulation, competition policy, and transparency and other government practices under the Enhanced Initiative. This submission is presented in that spirit.

C. CATV Operators' Rights. **Priority:** Establish regulations providing cable TV operators with rights to access poles, ducts, conduits and rights-of-way equal to those of Type I telecommunications carriers.

[redacted] Access to Privately Owned Buildings. Establish rules that facilitate access to privately owned buildings, particularly multi-dwelling units, to ensure that cable TV and new telecommunications competitors can reach the same customers as the incumbent carrier. For example, the GOJ should consider setting rules on demarcation points for telecommunications carriers to access buildings and prohibiting owners of multi-dwelling units from denying a tenant access to any telecommunications or cable TV service.

E. Access to Roads, Highways, Bridges, Tunnels and Other Public Rights-Of-Way

1. Augment rules to make explicit the requirement that road authorities provide access to roads, highways, bridges, tunnels and other public rights-of-way for telecommunications carriers and cable TV operators on a non-discriminatory, transparent, timely, and cost-based basis. Establish an expeditious complaint resolution mechanism.

2. Develop a plan to simplify procedures and reduce costs for installing network infrastructure in urban areas through measures such as:

   (1) Requiring road authorities to publish application procedures and clear terms, conditions, and rates for road usage;

   (2) Extending time periods for excavation on some roads;

   (3) Facilitating the use of new, more efficient installation technologies;

   (4) Advising telecommunications and cable TV companies well in advance of new highway, bridge, and other infrastructure construction plans that may provide new opportunities to install telecommunications and cable TV infrastructure;

   (5) Carriers or CATV providers, when installing facilities, e.g., conduit, for their own use, should also be able to install conduit for carriers or CATV providers.

F. Subways and Railroads. Establish rules requiring subway and railroad operators to provide transparent, timely, non-discriminatory, and cost-based access to facilities and rights-of-way owned or controlled by subway and railroad operators in order

TELECOMMUNICATIONS CARRIER ACCESS TO TENANTS IN MULTI-TENANT ENVIRONMENTS

Positions and Statements of Various Telecommunications Carriers

BellSouth Comments Florida (Filed on 7/29/98)

"Telecommunications companies should have 'direct access' to customers."

"Carriers should be free to choose the desired technologies used to deliver these services."

"If the Commission adopts the stance that a property owner has the authority to prevent a carrier from placing its facilities on the owner's property, then this authority is, in effect, a restriction to 'direct access.'"

"Telecommunications companies should not be prevented from offering services to subscribers on multi-tenant properties."

Southwestern Bell Comments Texas (filed 10/2/97)

"The higher the payment required of telecommunications providers, the less likely it is that tenants will see competitive choices."

"[C]ertain facilities (*e.g.*, conduit cable and wiring) may have been placed by telecommunications utility under an easement or other agreement between the utility and the property owner. Often, those facilities were placed at no charge because the building owner needed telephone service to the building and there was only one provider."

"Requiring compensation only as new tenants are served or as new revenues are generated would also be discriminatory. If compensation were so based in buildings served by multiple telecommunication utilities, then the incumbent would be advantaged by making no payment on existing tenants and existing revenues."

"[N]o provider should have to pay anything until the space designed for telephone equipment has been exhausted."

GTE Comments Florida (Filed on 7/29/98)

"Certified telecommunications companies should have direct access to tenants in a multi-tenant environment. The multi-tenant location owner manages access to an essential element in the delivery of telecommunications to the tenants, and telecommunications is essential to the public welfare. The owner should therefore be required to permit certified telecommunications companies access to space sufficient to provide telecommunications services to tenants."

"Any restrictions on direct access should be strictly constrained to reasonable security, safety, appearance, and physical space limitations."

"GTE does not believe that exclusionary contracts are ever appropriate."

"A multi-tenant location owner should not be allowed to charge for access to an essential element in the delivery of telecommunications to the tenants."

"Telecommunications firms should not be required to pay multi-tenant location owners for the ability to terminate network facilities that are needed to provide services to tenants of that multi-tenant location and that are essential to the public welfare and a necessary part of the building or property infrastructure.

Multi-tenant location owners do not charge other firms providing essential services (e.g., electric, gas, water, and sewage) for the right to provide such services. The space used by telecommunications, electric, water and other essential services firms is common area that benefit all tenants. This type of common area is analogous to the space required to provide elevator service, stairways and shared rest rooms in multi-story buildings. Costs for all types of these and other common areas should be recovered from tenants through normal rent payments."

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GTE Reply Comments Florida (Filed 8/28/98)

"In order to promote a technologically advanced and competitive telecommunications infrastructure . . . tenants in multi-tenant environments should have nondiscriminatory, technology neutral, and direct access to telecommunications service providers of their choice."

"Direct access to tenants in a multi-tenant location is not an unconstitutional taking."

GTE Comments Texas (Filed 10/3/97)

"The building owner, by controlling building access, manages an essential element in the delivery of telecommunications to the tenants in that building."

Sprint Comments Florida (Filed on 7/29/98)

"Telecommunications carriers should have direct access to customers in multi-tenant environments . . . The public policy of the United States . . . includes the development of local exchange competition and giving consumers the power to choose between competing telecommunications carriers and the services they offer."

"This kind of competitive environment requires non-discriminatory equal access by certificated carriers at some point on or at the premises of an MTE. To allow otherwise would subordinate the interests of end user customers and the development of competitive local exchange markets to the landlords."

"The Commission has historically regulated persons who own and/or operate telecommunications facilities for hire to the public. If landlords demand monopoly control over the facilities on their property needed to serve end user customers, impose a separate charge on tenants for service, or seek to extract a fee from a carrier for the right to serve an MTE, the landlords should be regulated by the FPSC in some fashion as telecommunications carriers, especially regarding the obligation to interconnect on a non-discriminatory basis with other telecommunications carriers."

AT&T Comments Texas (Filed 10/2/97)

"[B]uilding owners should be required to provide new entrants with comparable rates, terms, and conditions as might already exist with incumbent LECs or other telecommunications providers."

"[A]ll new entrants must be permitted . . . non-discriminatory use of any building distribution facilities "free of charge" as long as the incumbent LEC has use of those facilities.

"Property owners should be responsible for affording non-discriminatory access to their building to all telecommunications providers."

MCI Comments Nebraska (Filed on 9/8/98)

"All Nebraska customers should have access to competitive local exchange carrier ("CLECs") services. Thus, no matter which incumbent local exchange carrier ("ILEC") initially serves a particular apartment, building, campus, or business park, individual customers or tenants -- rather than the owner of the multiple dwelling units ("MDUs") -- should be able to choose their local exchange carrier."

WorldCom Comments Florida (Filed 8/26/98)

"[I]f competition is to develop in the multi-tenant environment, carriers must have direct access on a nondiscriminatory basis and without restrictions or limitations. . . ."

e.Spire, TCG, Teligent, & Time Warner Joint Comments Florida (Filed on 8/26/98)

"Tenant end users in multi-tenant environments should have direct access to their certificated telecommunications company of choice;"

"Ensuring telecommunications companies' nondiscriminatory and technology-neutral direct access to tenant end users in MTEs is important to the achievement of effective telecommunications competition in Florida;"

"Direct access includes access to those spaces and facilities within an MTE used by a telecommunications company to provide telecommunications services to a tenant end user, including, but not limited to, inside wiring, telephone closets, riser cables, and rooftops;"

TCG Comments Florida (Filed 7/29/98)

"Where competitive providers require access to install facilities to provide telecommunications services to customers in a MTE such as a modern commercial office building, building owners and managers have acted individually and in concert to prevent competition by denying access or by demanding discriminatory compensation from competitive service providers and their customers as tenants. Such actions deny consumers of telecommunications services the benefits of the competition intended by the federal and state laws and Commission policy."

"The discriminatory actions of MTE owners and managers in depriving their tenants and occupants access to their local provider of choice eviscerates the benefits of facilities-based competition intended by the federal Act and the Commission."

"Landlords and owners of MTEs, and building managers as their agents, do not have the right to select on behalf of their tenants between competing providers of telecommunications services on behalf of their tenants. . . ."

Time Warner Communications Comments Texas (Filed 10/2/97)

"If the incumbent is paying no fee for building access, it certainly will have a cost advantage over its new entrant competitors that are paying such a fee."

"Exempting incumbents from paying for building access inevitably impacts competitors adversely because of the comparative cost advantage the incumbent gains as a result."

HOUSE AMENDMENT FOR COMMITTEE PURPOSES

Bill No. h1135

Amendment No. 1 (for drafter's use only)

COMMITTEE ACTION

ADOPTED	Y	N	FAILED TO ADOPT	Y	N
ADOPTED AS AMENDED	Y	N	WITHDRAWN		
ADOPTED w/o OBJECTION			OTHER		

Committee hearing bill: Real Property & Probate

Representative(s) Goodlette offered the following substitute amendment to amendment:

Substitute Amendment to Amendment (with title amendment)

On page 1, line 19 through page 8, line 16 remove from the amendment: all of said lines

and insert in lieu thereof: Section 1. Section 364.341, Florida Statutes, is created to read:

364.341 Public purpose; definitions; standards for access to multitenant environments; prohibitions; regulations; civil cause of action.

(1) The Legislature finds that an important public purpose is achieved by providing access to tenants in multitenant environments, public and private, nonresidential and residential, for telecommunications companies seeking to promote competition and choice in delivering telecommunications services while at the same time balancing the private property rights of landlords.

(2) As used in this section:

(a) "Exclusionary contract" means an agreement between a landlord and a telecommunications company in which the telecommunications company is given exclusive access to the

Amendment No. 1 (for drafter's use only)

landlord's property for the purpose of providing telecommunications service.

(b) "Multitenant environment" includes any type of structure, ownership interest, and tenancy with multiple owners or tenants except:

1. Condominiums, as defined in s. 718.103.

2. Cooperatives, as defined in s. 719.103.

3. Communities governed by a homeowners' association as association is defined in s. 617.301.

4. Environments served by "call aggregators" as defined in F.A.C. 25-24.610.

5. A facility licensed in whole or in part as a nursing home facility or assisted living facility under chapter 400, or a facility licensed in whole or in part to provide continuing care under chapter 651.

6. Housing for the elderly or disabled that is financed or insured by the United States Department of Housing and Urban Development pursuant to the National Housing Act, or a similar federal program, or financed in whole or in part by the State Apartment Incentive Loan Program pursuant to s. 420.507, or a similar state program.

(c) "Landlord" means the owner or owners, owner's agent, assign, or successor in interest, or lessor.

(d) "Tenant" means any person or entity legally entitled to occupy a unit in a multitenant environment, but does not include a tenant with a nonresidential rental agreement of 13 months or less if the tenant has occupied the premises for less than 13 months or a tenant with a residential rental agreement of 13 months or less.

(3) The following standards for access by telecommunications companies to tenants in multitenant

Amendment No. 1 (for drafter's use only)

environments shall be applied on a reasonable and technologically neutral basis and all telecommunications companies shall be provided generally comparable terms and conditions for access:

(a) Access shall be granted on reasonable, technologically neutral, and generally comparable terms and conditions.

(b) Landlords and telecommunications companies shall make every reasonable effort to negotiate terms and conditions for access, which may be evidenced by license, access or similar customary agreements.

(c) After a tenant provides a written request to a telecommunications company for service, and the telecommunications company or the tenant conveys that written request for service to the landlord, the landlord and the telecommunications company shall comply with paragraph (b) in a reasonable and timely manner.

(d) A landlord may impose upon a telecommunications company or tenant reasonable terms and conditions and charge reasonable compensation to the telecommunications company or tenant, including reasonable compensation for design, installation, operation, maintenance, and removal of telecommunications network equipment and facilities reasonably necessary to provide telecommunications service to tenants. However, a landlord shall not charge a fee to the telecommunications company solely for the privilege of providing telecommunications service to a tenant in a multitenant environment. The landlord shall offer generally comparable terms, conditions, and compensation arrangements to all similarly situated telecommunications companies.

(e) A landlord may establish reasonable terms and

conditions with respect to the occupation, use, safety, security, or aesthetics of its property.

(f) A landlord may not deny a telecommunications company access to space or conduit if that space or conduit is sufficient to accommodate the facilities needed for access and the installation and operation of the facilities would not unreasonably interfere with the occupation, use, safety, security, or aesthetics of the property. A landlord may deny a telecommunications company access to its property where the space or conduit required for installation and operation of the facilities needed for access is not reasonably sufficient to accommodate the request or where the installation and operation would unreasonably interfere with the occupation, use, safety, security, or aesthetics of the property.

(g) Nothing in this section shall abrogate the obligations of the carrier-of-last-resort described in s. 364.025.

(4) Exclusionary contracts entered into on or after the effective date of this act are prohibited.

(5) In no event shall a local exchange telecommunications company be required to compensate a landlord under this section where the local exchange telecommunications company provides telecommunications services to tenants as the carrier of last resort and another telecommunications company is not providing telecommunications services to tenants.

(6) The circuit court in the circuit in which the multitenant environment is located shall have jurisdiction over disputes arising between telecommunication companies, tenants, and landlords concerning access to tenants for the provision of telecommunications services to the multitenant

Bill No. HB 1135

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environment. In resolving disputes related to access, the circuit court shall apply the standards described in subsection (3).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 2 through 14 of the bill remove from the title of the bill: all of said lines

and insert in lieu thereof:

An act relating to access to multitenant environments for the provision of telecommunication services; creating s. 364.341, F.S.; providing statement of public purpose, legislative intent, definitions, and standards; prohibiting exclusionary contracts; limiting applicability to certain tenants; prohibiting compensation of landlords under certain circumstances; creating a civil cause of action; amending ss.

FM Realty Group
REAL ESTATE SERVICES

April 22, 1999

VIA TELECOPY (941 / 741-3106)

The Honorable John McKay
The Florida Senate
404 S. Monroe Street
Room 416 Senate Office Building
Tallahassee, FL 32399-1300

Re: Telecommunications Company Access to Multitenant Environments; 1999 SB 1008, HB 1135

Dear Senator McKay:

I am contacting you on behalf of the Building Owners and Managers Association International of Florida, Inc. ("BOMA"). BOMA is the international trade association of commercial office building owners and managers. I am contacting you to urge your support for the above-captioned 1999 legislation for the reasons stated hereinafter.

First, as an active member of BOMA and a property manager, I have seen our organization incur tens of thousands of dollars in expenses attempting to protect our private property rights against the extremely well-funded lobbying efforts of alternative local exchange telecommunications companies ("ALECs") urging Florida's legislature to pass some form of "Mandatory Access" legislation. Any Mandatory Access legislation, or "forced building access" as it is sometimes called, would clearly infringe on the private property rights of landlords and effectively prohibit them from regulating who gains access to their properties and on what terms. In fact, the original version of HB 1135 was a Mandatory Access bill.

BOMA has been fighting Mandatory Access legislation in Florida for over two years, both at the 1998 and 1999 Legislative Sessions, as well as in the Florida Public Service Commission's public workshop hearings from June, 1998 through and including February, 1999. I would be remiss if I did not advise you that the process has been extremely frustrating, as well as expensive, because of the legislative and regulatory influence of the telecommunications industry.

Nevertheless, through protracted and often heated negotiations over the past six weeks or so, BOMA and other trade association groups of the real estate industry, including the International Council of Shopping Centers ("ICSC"), National Apartment Association ("NAA"), Institute of Real Estate Management ("IREM"), National Association of Industrial Office Parks ("NAIOP"), and Community Association Institute International ("CAI"), just to name a few, we have negotiated a mutually acceptable compromise bill in the form of current versions of SB 1008 and HB 1135. While not perfect from BOMA's perspective, we do feel that this legislation is in the best interests of all parties involved and will assist in the promotion of competition for the services of the formerly monopolistic, incumbent local exchange companies ("ILECs"). As BOMA has stated throughout this two year process in Florida, as well as in opposing the Mandatory Access lobbying efforts by the ALECs to Congress prior to the passage of the Federal Telecommunications Act of 1996, it is in the best interests of landlords to allow alternative telecommunications companies access to tenants of our properties.

Thank you for your consideration of BOMA's position on this issue, and if I can be of any service or information to you, please do not hesitate to call me.

Sincerely,

BOMA FLORIDA

By: _____
Ben J. Locke, Jr.
President

cc: Ms. D.K. Mink
John L. Brewerton, III, Esq.

TIMES ■ MONDAY, MARCH 29, 1999

Let tenants shop for phone service

When the Legislature rewrote Florida's telecommunications laws in 1995, it freed phone companies from regulation and stripped the Public Service Commission of much of its power to police the industry. In exchange, consumers were promised more competition and lower phone rates. Four years later, competition, particularly for local service, is virtually non-existent. A proposal being considered by the Legislature would open the door to greater competition in at least one market segment.

The legislation, sponsored by J. Dudley Goodlette, R-Naples, and a similar Senate proposal, would apply only to multitenant buildings — apartment complexes, shopping malls, office buildings and other property where tenants rent space. It would prohibit any "exclusionary contract" between a property owner and a telecommunications company. In other words, it would forbid property owners from giving any single phone company exclusive rights to provide service to tenants, provided a building is equipped with the space and facilities to support phone service by more than one company.

The bill would give tenants greater freedom of choice, while protecting the rights of property owners concerned that their buildings could be damaged by the installation of additional phone lines or equipment. Landlords would have the right to reject a phone company's request to run new lines into a building if the structure is unable to accommodate additional lines or if the installation "would unreasonably interfere with the aesthetics of the building."

In addition, the bill would give property owners the right to charge a telecommunications company or a tenant a reasonable fee for the installation or removal of equipment, or for other costs associated with providing new phone service. It also would give a property owner the right to impose conditions on any agreement with a phone company to protect the safety, security and aesthetics of the building. Any disputes would be settled by the PSC.

Goodlette's bill deserves approval, especially with lawmakers pushing a separate measure that would raise the basic rates for any phone customer who has an add-on feature such as call waiting. Because that rate-hike measure is expected to pass, it's only fair to provide consumers with an opportunity to shop around for the least expensive service. Goodlette's bill would encourage competition, technological innovation and new investment in Florida's telecommunications infrastructure. Texas and Connecticut already have enacted similar laws. Florida should join them.

The Times-Union, Jacksonville, Wednesday, April 28, 1999

TELECOMMUNICATIONS

Spur competition

If the Legislature does not act on one piece of legislation, it means lower phone bills for many businesses in Florida will be delayed.

Businesses waiting to provide local competition are supporting a bill by Rep. Dudley Goodlett, R-Naples. It would grant phone companies access to multi-tenant buildings in exchange for reasonable fees to the property owner.

Currently, companies can provide service to buildings where the property owner is the tenant. But where an owner has several tenants, companies have had difficulty in gaining access, sometimes because unreasonable fees are demanded.

The Public Service Commission held hearings on the issue and recommended the legislation. It has been approved by two House committees.

But in the press of business, some legislation lapses in the final days of a legislation session.

This bill holds the potential for substantial cost savings for medium-size businesses in Florida and, obviously, their customers. It should pass.

Editorial Notebook:

Conflict of interest? No problem

TALLAHASSEE - Once upon a time, when most people knew only one telephone company, the cartoonist Jules Pfeiffer depicted a haughty clerk brushing off a customer's complaint with the remark, "Well, you can always go to one of our competitors."

By MARTIN DYCKMAN

TALLAHASSEE – Once upon a time, when most people knew only one telephone company, the cartoonist Jules Pfeiffer depicted a haughty clerk brushing off a customer's complaint with the remark, "Well, you can always go to one of our competitors."

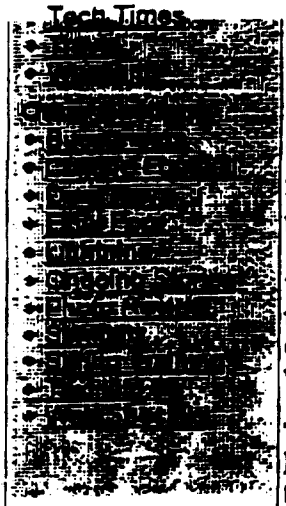
That would still be sarcasm where most customers are concerned. The local service competition Florida lawmakers confidently promised when they deregulated the industry four years ago hasn't materialized except for a handful of business customers.

One reason, among many, is that the landlords of shopping centers, office buildings, office parks and apartment houses have created their own telephone monopolies. They grant exclusive rights to one company or another in return for what can be a handsome percentage of the monthly billings. The tenant has no say. Landlords are harvesting the fruits of competition that were meant for telephone customers.

"The property owner becomes the telephone company," explains Sen. Tom Lee, R-Brandon, chairman of the Senate Regulated Industries Committee.

Lee intended to fix that through one of the provisions in comprehensive telephone legislation he brought to the Senate floor this week. Commercial landlords would have to negotiate in good faith with alternative carriers their tenants want.

It would be pleasing to report that Lee carried the day. Unfortunately, he did not. Rules chairman John McKay, R-Bradenton, opposed the provision, spent most of the



R-Bradenton, opposed the provision, spent most of the day lobbying other senators against it and effectively whipped Lee before the debate began.

It speaks well of Lee's integrity and courage that he didn't give up. No senator relishes opposing the rules chairman, whose power to set the Senate's agenda determines whose bills have a chance to pass and whose do not.

To make it touchier, McKay had a strong personal stake in the debate. He is a developer of shopping centers and office parks. In short, he is one of the landlords whom Lee was talking about.

The major organizations representing commercial landlords had signed off on the bill, but McKay charged that they did so for the wrong reasons, "because the big property owners, the real estate investment trusts and insurance companies, don't want to go to court."

Lee had scant help from his own delegation. Sen. Jim Hargrett, D-Tampa, took the floor, never looking at Lee, with some platitudinous remarks about "private property rights, that's fundamental." Consumer advocates strained in vain to hear him acknowledge tenants' rights. Lee, standing two desks away, glared holes into the back of Hargrett's head.

As glaring as it may have seemed, McKay's wasn't the most egregious conflict of interest in Tallahassee on Tuesday. That dubious distinction belonged to Rep. Marjorie Turnbull, D-Tallahassee, who cast the deciding vote in a 58-56 House vote to give the Leon County School Board's police training academy to Tallahassee Community College. The Leon board has bitterly opposed the snatch, winning in the Supreme Court last year when the Legislature tried to do it through spending restrictions in an appropriations bill. TCC's president, T.K. Wetherell, is a former House speaker. Turnbull works for him.

As required by a House rule, she put a notice in the House Journal: "I am disclosing that I am an employee of Tallahassee Community College which may receive a special gain if CS/SB 1664 should pass. However, pursuant to said Rule, I am required to vote."

That tells all there is to know about what the Legislature thinks about conflict of interest. She could, of course, have voted no.

Martin Dyckman is a Times associate editor.

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